

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Oversight and Productivity Committee

BILL: CS/CS/SB 1112

INTRODUCER: Governmental Oversight and Productivity Committee, Community Affairs Committee and Senator Bennett

SUBJECT: Licensing

DATE: March 22, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill requires state agencies to include a citation to the applicable rule, statute, or both if applicable, on which the issuance or denial of a license is based in the agencies' written notice to the applicant.

It requires a county or municipality to provide written notice to each applicant for a development permit, when the county or municipality denies the application. The notice must also state with particularity the grounds or basis, including a citation to the applicable ordinance or other legal authority, for the denial of the development permit. The bill provides that for purposes of a quasi-judicial proceeding, the written notice may refer generally to the record before the decision-making body, and the notice is not required to contain written findings of fact or conclusions of law.

The bill amends section 120.60 of the Florida Statutes. It also creates sections 125.022 and 166.033, of the Florida Statutes.

II. Present Situation:

Licensing in Chapter 120

Section 120.60, F.S., provides requirements relating to licensing for agencies subject to the Administrative Procedure Act. "Agency" means:

- The Governor in the exercise of all executive powers other than those derived from the constitution.

- Each state officer and state department, and each departmental unit described in s. 20.04.¹
- Each authority, including a regional water supply authority.
- Each board.
- Each commission, including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.
- Each regional planning agency.
- Each multicounty special district with a majority of its governing board comprised of nonelected persons.
- Each educational unit.
- Each entity described in chapters 163 (relating to intergovernmental programs), 373 (relating to water management districts), 380 (relating to land and water management), 582 (relating to soil and water conservation), and s. 186.504 (regional planning councils).
- Each other unit of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.
- Each regional water supply authority.

“Agency” does not mean:

- Entities created in relation to joint electric power supply projects.
- Metropolitan planning organizations or associated entities.
- Expressway authorities.
- Entities created pursuant to interlocal agreements (unless a party is an agency).
- Any multicounty special district with a majority of its governing board comprised of elected persons.²

For purposes of ch. 120, F.S., the term “license” means a “franchise, permit, certification, registration, charter, or similar form of authorization required by law,” but does not include a license issued primarily for revenue and for which the issuance is a ministerial act.³

Section 120.60, F.S., prescribes timeframes for reviewing an application, requesting additional information, and taking action on the application. This provision requires an agency to provide written notice to each license applicant that the agency intends to grant or deny, or has granted or denied, the application. The required written notice must state with particularity the grounds or basis for the issuance or denial of the license, except when the issuance is a ministerial act.⁴

Licensing and Units of Local Government

Units of local government issue various licenses and permits to regulate various types of activities and entities, such as the following: contractors, construction, signs, irrigation, landscaping, specialty permits, environmental, business activities, and special events.

¹ Section 20.04, F.S., provides the structure of the executive branch.

² Section 120.52(1), F.S.

³ Section 120.52(9), F.S. A duty or act is defined as ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law. *Solomon v. Sanitarians' Registration Bd.*, 155 So.2d 353 (Fla.1963).

⁴ Section 120.60(3), F.S.

Applications are available from the local government. If the applicant meets the requirements of the ordinance that governs the permit or license, the local government may issue the permit or license. Currently, there is no statutory requirement that a local government provides written notice to the applicant of its intent to issue or deny an application for a license or permit. There is also no statutory requirement that the local government provide written documentation to the applicant which specifies the ordinance or other legal authority relied on by the local government in determining whether to issue or deny the permit or license.

III. Effect of Proposed Changes:

Section 1 amends s. 120.60, F.S., to require those agencies that are subject to ch. 120, F.S., to include in the written notice of intended agency action given to the applicant, a citation to the applicable rule, statute, or both if applicable, on which the issuance or denial of a license is based.

Section 2 creates s. 125.022, F.S., which requires that when a county denies an application for a development permit, the county must provide written notice to the applicant. The notice must state with particularity the grounds or basis, including a citation to the applicable ordinance or other legal authority, for the denial of the development permit. The bill provides that for purposes of a quasi-judicial proceeding, the written notice may refer generally to the record before the decision-making body, and the notice is not required to contain written findings of fact or conclusions of law.

Section 3 creates s. 166.033, F.S., which contains the same requirements as section 2 of this bill, as applicable to municipalities.

Section 4 provides this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may provide a cost savings to those seeking streamlined permitting for various activities. Because a local government must specify the legal authority that is the basis for its denial of a development permit, the applicant may be able to correct any compliance issues sooner.

C. Government Sector Impact:

This bill requires state agencies subject to ch. 120, F.S., to include a citation to the applicable rule, statute, or both if applicable, that is the basis for the issuance or denial of a license. Because ch. 120, F.S., already requires an agency to send written notice to the applicant of its intended action on the application, there is likely no additional cost as the result of this bill.

Under this bill, a local government must provide written notice of its denial of a development permit, including a citation to the ordinance or other legal authority on which the denial is based. If there are units of local government that do not currently provide written notice with citation to legal authority when denying an application for a development permit, those units of local government may incur increased costs in complying with the bill. Those costs are indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
